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Broadcasting

P.0891

PRIME MINISTER

Cable Policy  
(E(TP)(82)10)

BACKGROUND

— see flag A  
— see flag B  
— see flag C

Last January, the Information Technology Advisory Panel (ITAP) submitted a report to you urging an expansion of wideband cable systems in the United Kingdom. In approving publication of the report (it was published on 22 March) you asked the Cabinet Office to coordinate official examination of the issues it raised. E Committee considered a memorandum on cable systems by the Home Secretary and the Secretary of State for Industry (E(82)14) on 25 February, and approved the terms of reference of an enquiry into the broadcasting policy issues (E(82)6th Meeting, Item 3). This was established under Lord Hunt of Tanworth whose report was submitted on 28 September, and published on 12 October. Officials were asked to take the Hunt findings into account in preparing comprehensive advice for consideration in the autumn.

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2. E(TP)(82)10 is the report of the interdepartmental group of officials under Cabinet Office chairmanship. The summary at the front indicates the main issues and includes all the detailed recommendations on which Ministers' decisions are required.

MAIN ISSUES

3. The issues for decision by Ministers fall under the following broad headings:

- i. Technical issues  
(ie how far should the Government prescribe a particular type of cable system?)





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- ii. Telecommunications policy issues  
(ie how far should cable systems offer switched two-way services in competition with BT and Mercury? How far should BT and Mercury be allowed to become involved in cable systems?)
- iii. Broadcasting policy issues  
(ie how far should existing rules about broadcasting be applied to cable systems? What measures should be taken to protect existing broadcasting interests? What restrictions should be imposed on the ownership and control of cable systems?)
- iv. The machinery for regulation  
(ie what kind of regulatory body is required? Should the IBA take on this role? What should be the duration of licence and franchise periods?)
- v. Next steps  
(ie should there be legislation in the current session? If not, what should be done in advance of legislation? What should be the content, form and timing of a policy statement? What further work is needed and who should do it?)

#### MAIN ISSUES

##### Network design and technical standards (Chapter 3 of the report)

4. Those who provide cable systems will require licences from the Secretary of State since they come within the scope of telecommunications legislation. Conditions attached to these licences could require systems to utilise certain network design principles in order to encourage the use of optical fibres and other advanced technology. The main choice is between "tree-and-branch" systems (standard American technology) which, although cheaper, would limit two-way service capabilities and cannot use optical fibres, and "switched-star", (unproven but the UK is up with the leaders in development) which could have greater two-way potential, and could use optical fibres. But technological development is so rapid that there would be a high risk of an inappropriate and costly choice. The sub-Committee will probably wish to agree with the report that the Government should remain agnostic on this point, subject to:





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- a. a requirement that any new ducting should be suitable for the eventual installation of a switched-star network (the extra cost is small - of the order of 10-15 per cent);
- b. the imposition of some minimum service standards (details to be decided later, following receipt of draft standards from a Technical Working Group), to ensure that systems can accommodate reasonable future demands and can be interlinked.

The report suggests that the broad service capabilities included in the Technical Working Group's terms of reference should be included in any early policy statement.

Telecommunications policy (Chapter 4)

5. At present, only Mercury is allowed to offer switched two-way telecommunications services in competition with BT. If this policy is strictly applied to cable systems, either they would not be able to offer any advanced services (contrary to all the predictions about their significance for the future development of such services) or BT and/or Mercury would need to have effective control of the systems (which would deter most private investors). The report recommends relaxation of current policy so that cable systems could compete in some areas with BT and Mercury. You have already considered some of the implications for the national interest with the Ministers most closely concerned. The conclusion reached was that, so far as protection of the national interest is concerned, the policy might be relaxed so as to enable cable systems to offer switched two-way services within a local area, subject to one important limitation, ie that these services should not include voice telephony. This additional competition will not be welcome to BT and Mercury but the sub-Committee will wish to consider whether it should be permitted, despite their possible opposition.

6. The next issue is what role BT and Mercury should play in cable. The paper recommends that they should be allowed to compete with other bodies for the role of sub-contractor, cable provider, or (with others) cable operator. Some members of the sub-Committee may feel that this goes too far, in that it extends BT's range of activities. Against this must be weighed the risks





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of increasing opposition to the Government's proposals, and possibly of prejudicing the market value of BT plc.

Broadcasting implications (Chapter 5)

7. For economic reasons, cable operators will, at least in the early stages, have to be given a monopoly in the area which they serve. It is therefore necessary to consider what conditions should be attached to that monopoly - the terms of their franchise - and how franchises should be allocated. The issues also involve consideration of the relationship between cable systems and existing broadcasting organisations.

8. Cable systems, if successful, would affect broadcasting - and particularly ITV - since they would draw viewers from the broadcast services, thereby reducing advertising income. In time, they would also create pressure for an end to the BBC licence fee. In approving the development of systems with relative freedom of programming, Ministers would thus probably in the long run be signalling the end of public broadcasting as we know it (although not before the expiry of the BBC Charter and the IBA statute in 1995). The broadcasters have therefore expressed great concern over the introduction of cable systems and have suggested that Hunt's proposals will not give proper protection to the 50 per cent or more of viewers not connected to cable systems. The issues are, therefore:

- a. to what extent do the sub-Committee wish to restrict competition to the IBA and BBC services?
  - b. what specific restraints do they wish to apply to programmes, advertising and the financing of cable systems to meet such concerns?
9. Hunt proposed protecting broadcasting interests by:
- i. insisting on the same requirements on "taste and decency" as now apply to the BBC and IBA and prohibiting films not passed by the British Board of Film Censors;
  - ii. requiring that all non-subscription BBC and ITV programmes serving a cabled area should be carried (the "must carry" rule);





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- iii. preventing "pay-per-view", ie special charges for individual programmes, (strongly urged by the BBC);
- iv. maintaining a list of "national" events that must be accessible to broadcasting interests.

10. The report advises acceptance of these, except for (iii) where it suggests that some events (eg sporting events specially arranged by cable interests) could be financed by pay-per-view. The sub-Committee will need to take a view on whether these proposals are sufficient. It will also need to consider the impact of the other Hunt recommendations, with which the report in general concurs, in particular:

- v. unlimited advertising on cable systems;
- vi. no requirement (except in the reporting of news) for balance of comment;
- vii. no requirement for a broad range or balance in programming;
- viii. no limit on the use of overseas material;
- ix. no limit on programming for political or religious interests.

In considering these, the sub-Committee will need to bear in mind that cable services will compete with many other sources of entertainment and information and so proposals that might be considered unacceptable when applied to a few broadcast channels may be more tolerable when viewers have greater choice and can select what they consider to be attractive and acceptable.

#### Ownership of cable operations (Chapter 5)

11. A decision is required on whether the same person should be allowed both to own the cable and to provide services over it. The argument in favour of allowing this is that those who incur the cost of providing the cable should be entitled to control their source of income; if not, private investment





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will not be forthcoming. The argument against (deployed by BT and the POEU) is that the owner of the cable should be a "common carrier", thus avoiding the difficulty which might arise when a cable operator loses his franchise. The report proposes ways of getting round this difficulty and recommends (like ITAP and Hunt) that the same person can be allowed both to own and operate cable systems.

12. The other aspects of ownership (exclusion of central and local government and political and religious bodies, foreign interests, and preventing dominance by other media interests) are comparatively non-controversial, but the sub-Committee may wish to give particular attention to the recommendations by Hunt that political and religious bodies should not be allowed to operate complete channels and that there should be no minimum requirement for programme material of British (or EC) origin. The report rejects the former, since no control is suggested over the amount of material supplied by such bodies to other programme providers; and is divided on the latter - the Home Office alone recommending some control over imported materials, although it would be difficult to impose in practice.

Regulation, who does it? (Chapter 6)

13. Day to day control of broadcasting by Ministers has never been thought appropriate. The same considerations apply to cable; and there are strong arguments for the regulation of programmes and advertising to be carried out by a national body with a statutory remit. This body should award the franchises to operators. The report suggests that it should also award telecommunications licences to cable system providers in the name of the Secretary of State. You will, however, wish to ask the Secretary of State for Industry whether he has reservations about this. The regulatory body might also play some part in the regulation of non-programme services although this needs further consideration once the main policy decisions have been made.

14. When the sub-Committee has satisfied itself about the need for a regulatory body and its scope, the next issue is whether the IBA should have the job. It has the right experience and it would be administratively more economical than a new body. It has not however been sympathetic towards cable





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systems; and the choice would depress the enthusiasm of many prospective cable interests. A new "cable authority" may therefore be needed. Whether or not the IBA has the task, legislation will be required.

#### Other regulatory matters (Chapter 7)

15. The report deals with various other regulatory points - whether to take powers for an ITV-type levy, modification to local authority powers etc. The most important of these points concerns the duration of licences for the cable providers and franchises for the cable operators. Hunt recommended an initial 10 years followed by 8-year franchises for the latter, but made no recommendation for the former. Cable interests have argued strongly for long periods (20 years or more). This would enable them to amortise the initial costs at a rate which kept down the charges to subscribers. But a shorter period would help to keep operators up to the mark. Because of the desirability of keeping franchise and licence periods in step (there would otherwise be unfortunate overlaps), the report proposes a slight modification to the Hunt recommendation on franchises for operators and suggests giving both franchise and licence holders 12 years initially, with 20-year licences available for those cable providers who use advanced technology. This would provide an additional incentive for the installation of switched-star systems.

16. The sub-Committee will need to consider carefully whether a 12-year period provides sufficient security for investors, and how to overcome the problems associated with long franchises for cable operators if this period is considered inadequate.

#### Legislation and interim steps (Chapter 8)

17. Assuming a statutory body is required to regulate cable systems, can the legislation be enacted in the current session? To do a proper job requires a good deal more work - on the implementation of the Hunt conclusions, the precise boundaries to the cable authority's role (which will have to be reflected in the legislation), quite apart from other pressures on the Parliamentary timetable. If the sub-Committee rule out legislation in the current session, they will wish to consider what could be done under present powers to encourage the development of cable systems.





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18. There are two main options in advance of legislation: to permit some extension of the services available on existing cable systems or to go further and grant franchises also to some new systems. The main constraint is the Government's reluctance to be drawn directly into decisions about programme matters and the risk of preempting the subsequent legislation. It could be argued that, in the absence of a new regulatory body, it would not be too onerous for the Home Secretary to take decisions about extending services on existing systems; the franchising of new systems on this basis would however be a more onerous and invidious task. Whichever option is adopted, an Advisory Committee might take some of the strain from Ministers. Such a Committee could in due course be turned into a "shadow authority" after the Second Reading of the necessary Bill. Department of Industry Ministers will be pressing for at least some interim action in advance of legislation; the Home Secretary will be less certain about the desirability of taking potentially controversial decisions over programming and advertising etc in advance of legislation.

Policy statement

19. There is to be a Commons debate on 2 December; and you are to address the major IT conference at the Barbican on Wednesday 8 December. Since the purpose of the former is primarily to provide an opportunity for the House to express its own views, it would not seem appropriate for the Government to announce any policy decisions then. Provided Parliamentary proprieties can be observed, the Barbican speech would be a suitable opportunity to give a very broad indication of the Government's thinking, with a detailed oral statement by the Home Secretary or a written Parliamentary Question by yourself that afternoon or on the following day. In order to give potential investors a worthwhile indication of the Government's intentions, and so allow preliminary planning to take place, the package of announcements will need to include decisions on the main issues listed in paragraph 3 of this brief. Since however a number of more detailed issues require further study (eg the precise technical standards and the exact division of regulatory responsibilities between any new body and existing bodies) the statement might look forward to the issue of a more comprehensive document (perhaps a White Paper) in the Spring, which might set out in some detail the Government's proposals for the ensuing legislation.

There are two problems here:  
(i) you will have to have announcements made in Parliament of any significant policy decision before including it in the Barbican speech  
(ii) all this is uncomfortably close to a take-note debate on 2 December  
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Responsibilities for future work

20. Now that the main task of interdepartmental coordination has been completed, you will probably wish to put the follow-up action as far as possible in the hands of the lead Ministers. Although the Department of Industry has a major interest in pushing for rapid development of cable, the implementation of the sub-Committee's policy decisions and especially the setting-up of a new regulatory regime, will fall mainly to the Home Office. You may therefore wish to consider whether the responsibility for preparing any White Paper to follow up the December package of announcements should be assigned to the Home Secretary, in consultation with the Secretary of State for Industry and other Ministers as appropriate.

HANDLING

21. As agreed earlier you will wish to begin by asking Mr Unwin, who chaired the Official Group, to give a presentation to the sub-Committee of the main issues involved; this will take some 20 minutes. You may find it helpful to ask members of the sub-Committee for any general reactions to the Group's conclusions. This will probably take up the time available at the first meeting. The detailed issues can then be worked through at the subsequent meeting or meetings, using the summary of the report as an annotated agenda.

22. You will wish the Secretary of State for Industry or, in his absence, Mr Baker to take the lead on the industrial and telecommunication issues, and the Home Secretary or Mr Raison on the broadcasting and regulatory issues. The Secretary of State for Trade may wish to comment on aspects of competition policy.

CONCLUSIONS

23. You will wish to reach conclusions on all the points indicated in the summary, and in particular on:

- i. whether the Government should refrain from imposing any particular design of cable system but should require ducting to be suitable for eventual installation of a switched-star system;





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- ii. whether cable systems should offer switched two-way services in competition with BT and Mercury and, if so, to what extent;
- iii. whether BT and Mercury should be allowed to compete with other bodies for the roles of sub-contractor, cable provider or, in association with others, cable operator;
- iv. whether the broad approach on broadcasting issues should be as recommended in the Hunt Report subject to:
  - a. leaving open the possibility of some form of "pay-per-view";
  - b. allowing religious and political bodies to provide whole channels;
  - c. having a limit (if the sub-Committee so decide) on non-EC programme material;
  - d. having some limit (if the sub-Committee so decide) on advertising;
- v. whether in particular there should be no mandatory separation of the roles of cable provider and cable operator;
- vi. whether there should be a statutory regulatory body responsible for awarding not only franchises to cable operators but also licences to cable providers;
- vii. whether this body should draw up and publish a broad indicative framework for franchise areas before inviting applications;
- viii. whether this body should be the IBA or a new body;
- ix. whether the duration of franchises and licences should be as proposed in the officials' report;
- x. whether there should be legislation in the current session and, if not, what interim measures should be taken;

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- xi. what should be the content, form and timing of a policy statement;
- xii. who should take the lead in the various outstanding tasks.

*PLG*

P L GREGSON

conqueror

17 November 1982